

ORDINANCE NO: _____

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION, MID-TEX DIVISION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY NATURAL GAS TO THE GENERAL PUBLIC IN THE CITY OF MESQUITE, DALLAS AND KAUFMAN COUNTIES, TEXAS, TO CONSTRUCT, MAINTAIN AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF MESQUITE, DALLAS AND KAUFMAN COUNTIES, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF NATURAL GAS IN, OUT OF AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; REPEALING ALL PREVIOUS ATMOS ENERGY GAS FRANCHISE ORDINANCES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; A MOST FAVORED NATIONS CLAUSE AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. GRANT OF AUTHORITY. The City of Mesquite, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future Public Rights-of-Way, for the purpose of laying, maintaining, constructing, protecting, operating and replacing therein and thereon Atmos Energy's System to deliver, transport and distribute natural gas in, out of and through City for persons, firms and corporations, including all the general public, and to sell gas to persons, firms and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2037 ("expiration date"). Unless written notice of its intent to renegotiate is provided by either the City or Atmos Energy at least 60 days prior to the expiration of any term, the franchise shall be extended for up to two (2) additional terms of five years each from the expiration date on the same terms and conditions as set forth herein.

SECTION 2. DEFINITIONS. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Affiliate" shall mean, in relation to Atmos Energy, a Person that controls, is controlled by, or is under common control with Atmos Energy. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than fifty (50) percent of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.
- B. "Atmos Energy" shall mean Atmos Energy Corporation, Mid-Tex Division, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted herein except through succession or assignment in accordance with Section 17.
- C. "City" shall mean the City of Mesquite, Texas, a Texas home rule municipality and local governmental entity located in Dallas and Kaufman Counties, Texas.
- D. "City Manager" means City's Manager or the City Manager's designee.
- E. "Gross Revenues" shall mean:
 - (1) all revenues received by Atmos Energy, from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.
 - (2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding gas transported to another gas utility in City for resale to its customers within City);
 - (3) the value of gas transported by Atmos Energy for transport customers through the System of Atmos Energy within the City (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and
 - (4) fees collected pursuant to this agreement, revenues billed but not ultimately collected or received by Atmos Energy, contributions in aid of construction, state gross receipts fees, and the following "miscellaneous charges": charges to connect, disconnect or reconnect gas, and charges to handle returned checks from consumers within the City.

"Gross Revenues" shall not include:

- (a) the revenue of any affiliate or subsidiary of Atmos Energy;
- (b) sales taxes paid to City;

- (c) any interest or investment income earned by Atmos Energy; and
 - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Rights-of-Way.
- F. "Person" shall mean any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.
- G. "Public Facility" shall mean all present and future water lines, sanitary sewer lines, storm sewer lines, communications lines, irrigation lines, drainage facilities, traffic control devices, signage, street lights, and all other publicly-owned equipment, installations, and amenities under the jurisdiction and control of the City.
- H. "Public Right-of-Way" shall mean all present and future public streets, avenues, highways, alleys, sidewalks, trails, boulevards, drives, tunnels, public utility easements, grounds, bridges and other such similar passageways, thoroughfares and public ways under the jurisdiction and control of the City.
- I. "System" or "System Facilities" shall mean all of Atmos Energy's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas located in the Public Right-of-Way within the corporate limits of the City.
- J. "Transport Customer" shall mean any Person for which Atmos Energy transports gas through the System of Atmos Energy within the City's Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City).

**SECTION 3. CONSTRUCTION, MAINTENANCE, OPERATION AND
RELOCATION OF ATMOS ENERGY FACILITIES.**

- A. All construction and work done by Atmos Energy, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force and that may hereafter be adopted or amended by City related to the use of its Public Rights-of-Way, provided such ordinances, rules and regulations are not in express conflict with this Franchise. If the Franchise does not provide an express provision governing the use of the Public Right-of-Way, the requirements of the Code of Ordinances controls.
- B. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Gas Utility Regulatory Act or other state or federal law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal or file suit with respect to any action or decision of

the other party, including ordinances adopted by the City that Atmos Energy believes are contrary to any federal, state or local law or regulations.

- C. Atmos Energy's System Facilities shall be initially constructed so as not to interfere with the existing installation, maintenance and operations of any Public Facilities, franchised utilities, or other authorized occupants of the Public Right-of-Way. Atmos Energy shall promptly clean-up, repair and restore in compliance with applicable provisions of the Mesquite Code of Ordinances and policies, all thoroughfares and other surfaces which it may disturb. Atmos Energy shall maintain in good condition and repair all Public Right-of-Way and easements it occupies in the City, and shall promptly restore and repair any such Public Rights-of-Way and easements upon receipt of complaints or other communications, either verbal or written, from adjacent property owners or occupants regarding the condition of such Public Rights-of-Way and easements.
- D. Atmos Energy shall install, maintain, construct, operate and replace its System Facilities in accordance with applicable provisions of the Mesquite Code of Ordinances and policies to minimize interference with traffic, and shall place or cause to be placed appropriate barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb. In determining the location of new Public Facilities of the City and other users' facilities within Public Right-of-Way, City shall make reasonable efforts to minimize interference with then existing facilities of Atmos Energy and shall work with Atmos Energy and other users of Public Rights-of-Way to minimize, to the extent reasonably possible, interference with existing facilities of Atmos Energy by other users of Public Rights-of-Way. In the event of a conflict between the location of the proposed System Facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved through the parties' good faith efforts, City or an authorized agent of City shall resolve the conflict and determine the location of the respective System Facilities within the Public Rights-of-Way consistent with gas distribution industry standard safe operating practices. Facilities are deemed to be in conflict to the extent that the proposed Facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices.
- E. When Atmos Energy is required by City to remove or relocate its mains, laterals and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall make all reasonable efforts to provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City in order for City to be able to submit its application for reimbursement to such program in a timely manner. Upon receipt

of an amount of reimbursement intended for utility relocation including, but not limited to, gas utilities, City shall remit to Atmos Energy, within 60 days of receipt, the portion of reimbursement related to the relocation or removal of Atmos Energy's facilities.

- F. Atmos Energy's obligation to remove or relocate its mains, laterals, or other System Facilities lying within the Public Rights-of-Way for construction, improvement, or relocation of public facilities, shall be as provided in the Code of Ordinances of the City, as such provisions exist on the Effective Date hereof. Such removal or relocation shall be at Atmos Energy's expense unless such relocation or removal is required for the primary purpose of beautification or to accommodate a private developer. Atmos Energy shall not be required to relocate the facilities to a depth of greater than four (4) feet unless the City Engineer determines, in consultation with Atmos Energy, that the protection of public health and safety requires the relocation of the facilities at such greater depth.
- G. When Atmos Energy is required to remove or relocate its mains, laterals or other System Facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Atmos Energy is required by City to perform relocation. City shall not require that Atmos Energy document request for reimbursement as a pre-condition to recovery from customers of such relocation costs pursuant to applicable state and/or federal law. Notwithstanding the foregoing, the City shall have the right to request other project documentation to the full extent provided by state law.
- H. If City abandons any Public Rights-of-Way in which Atmos Energy has System Facilities for public safety reasons or in furtherance of a public project, such abandonment will be governed by the provisions of City's Rights-of-Way Rules and Regulations contained in the Code of the City of Mesquite and applicable policies. If City elects to abandon Public Rights-of-Way in these circumstances, City shall determine whether it is appropriate to retain a public utility easement in such Public Right-of-Way for use by Atmos Energy. If City determines, in its sole discretion, that the continued use of the Public Right-of-Way by Atmos Energy is compatible with the abandonment of the Public Right-of-Way, then in consideration of the compensation set forth in Section 13, and to the maximum extent of its right to do so, City shall grant Atmos Energy an easement for such use, and the abandonment of the Public Right-of-Way shall be subject to the right and continued use of Atmos Energy. If City determines, in its sole reasonable discretion, that it is not appropriate to retain a public utility easement in such Public Right-of-Way, Atmos Energy shall be responsible, subject to the provisions of this Section 3, for relocating its System from such Public Right-of-Way, as directed by City. If Public Right-of-Way is sold, conveyed, abandoned, or surrendered by City to a third party, such action shall be conditioned upon Atmos Energy's right to maintain use of the former Public Right-of-Way. If the third party requests Atmos Energy

to remove or relocate its System Facilities from the former Public Right-of-Way and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. In the event of a third party requesting the relocation, if relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

- I. Upon request by City for a public health or safety purpose, Atmos Energy shall provide maps in a digital format showing the location of its System Facilities and cooperate in locating its System Facilities when necessary to avoid conflict and protect the health and safety of the public. All maps temporarily provided by Atmos Energy to the City shall be deemed confidential and proprietary, and will be provided solely for the City's use. The City agrees to maintain the confidentiality of any non-public information obtained from Atmos Energy to the extent allowed by law. If the City receives a request under the Texas Public Information Act that includes Atmos Energy's previously designated proprietary or confidential information, the City shall provide notice to Atmos Energy of any request for release of information previously designated by Atmos Energy as proprietary or confidential non-public information. City will comply with the law, as amended.

SECTION 4. LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS.

- A. Whenever City shall decide to make public improvements in the Public Right-of-Way in which Atmos Energy's System Facilities already exist or in which Atmos Energy may propose to install its System Facilities, Atmos Energy will be provided the opportunity, at no expense to City, in advance of such improvements to renew such System Facilities, if defective or inadequate in size and to lay System Facilities, or renew same, if inadequate in size or defective, to the property lines where buildings may be located provided such activities do not delay the City's public improvements.
- B. Atmos Energy shall be given written notice of the intention of City to make major public improvements to any Public Facility, including, but not limited to, pavements, sidewalks, water lines, sanitary sewer lines, storm sewer lines and communications lines, in any such Public Rights-of-Way. Within 90 days from receipt of such notice, Atmos Energy shall initiate work and thereafter proceed in a workman-like manner to completion of the necessary work to relocate or adjust its lines and facilities to accommodate the City's public improvements and complete such work within three months to preclude the delay of said public improvements. Atmos Energy shall take reasonable measures to ensure uninterrupted service to its customers and shall reconnect all customer service lines disconnected in the normal course of construction at its own expense. If Atmos Energy should fail to so proceed, and any street or alley is thereupon paved, except in an emergency or in response to a request for initiation of new service, Atmos Energy shall for three years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose. All pavement cuts or

excavations within the three-year period, except in response to an emergency or in response to a request for initiation of new service, shall be performed only upon written permission of the City Engineer under such terms and conditions as the City Engineer may prescribe. Atmos Energy shall obtain a permit for emergency work as soon as possible after the commencement of such work in accordance with Chapter 15, Article III, Code of Ordinances of the City, entitled "Rights-of-Way Rules and Regulations," as amended.

SECTION 5. **LIABILITY INSURANCE.** Atmos Energy will maintain insurance in accordance with Chapter 15, Article III, Mesquite Code of Ordinances, as amended. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Atmos Energy in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City. Atmos Energy will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured and any excess coverage purchased solely for Atmos Energy's operations within the City will name the City as an additional insured up to the amounts required by City's ordinance.

SECTION 6. **INSTALLATION OF METERS.** If a meter is to be installed in or near the Public Rights-of-Way, Atmos Energy agrees to discuss with the City's representative the aesthetics of the meter placement and to accommodate the request of City to the maximum extent possible. If City requests a meter upgrade, Atmos Energy will comply so long as City reimburses Atmos Energy for the reasonable costs incurred by Atmos Energy in changing meters. In no event, however, shall underground meters be required.

SECTION 7. **EXTENSIONS FOR CUSTOMERS.** Atmos Energy shall, at its expense, extend distribution mains in any Public Right-of-Way up to one hundred (100) feet for any one residential or commercial customer so long as the customer at a minimum uses gas for unsupplemented space heating and water heating. Atmos Energy shall not be required to extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Atmos Energy agrees to such extension by a written agreement between Atmos Energy and a customer.

SECTION 8. **DUTY TO SERVE.**

- A. Atmos Energy agrees that it shall not arbitrarily refuse to provide service to any Person having a service location within the City and meeting Atmos Energy's reasonable credit requirements that it is economically feasible for Atmos Energy to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of City or its designee, said hearing to be held within 45 days from the date of the request for hearing. The City Council may order Atmos Energy to provide service or take any other action necessary to bring Atmos Energy into compliance with the intent of the City Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 15.B. The City Council may render its opinion at its next regular meeting but in no event shall it be required to act in less than 14 days.
- B. Commencing five calendar days following the adoption of a resolution or an

ordinance of the City that finds and determines a failure of Atmos Energy to comply with operational or maintenance standards as required by this Franchise Ordinance, the City may elect to terminate this Franchise in accordance with Section 15.

SECTION 9. CUSTOMER SERVICE STANDARDS; LOCAL PAY STATION.

- A. Atmos Energy shall maintain a local, toll-free or collect call telephone access line which will be available to its customers 24 hours a day, seven days a week.
- B. Atmos Energy shall make a good faith effort to maintain within City one or more locations where customers can pay their bills. In no circumstance shall the absence of such a location be considered violation of a material provision of this Franchise as outlined in Section 15.

SECTION 10. RATES. Atmos Energy shall furnish reasonably adequate service to the public at just and reasonable rates and charges therefore, Atmos Energy shall maintain its System in good order and condition. Atmos Energy's rates and charges shall be established and shall be subject to revision and change by City or Atmos Energy in accordance with all applicable statutes and ordinances. Atmos Energy shall maintain on file with City copies of its current tariffs, schedules or rates and charges, customer service provisions and line extension policies.

SECTION 11. INDEMNITY.

- A. **IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, ATMOS ENERGY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, EMPLOYEES (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS "INDEMNITEES"), FROM AND AGAINST ALL SUITS, ACTIONS OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY ATMOS ENERGY'S INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS IN CONNECTION WITH ATMOS ENERGY'S CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, REPAIR, USE, OPERATIONS OR DISMANTLING OF SYSTEM OR ATMOS ENERGY'S PROVISION OF SERVICE; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO THE EXTENT ANY LIABILITY IS DETERMINED TO HAVE RESULTED FROM NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF CITY, ITS OFFICERS, AGENTS AND EMPLOYEES. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH ATMOS ENERGY AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY OF THE DEFENSES OF THE PARTIES UNDER TEXAS LAW. FURTHER, IN THE EVENT OF JOINT**

AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH ATMOS ENERGY AND CITY, RESPONSIBILITY FOR ALL COSTS OF DEFENSE SHALL BE APPORTIONED BETWEEN CITY AND ATMOS ENERGY BASED UPON THE COMPARATIVE FAULT OF EACH.

- B. By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas Law or waive any defenses of the parties under Texas law.
- C. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Atmos Energy shall, upon notice from any of the Indemnitees, at Atmos Energy's sole cost and expense, resist and defend the same with legal counsel selected by Atmos Energy, provided; however, that Atmos Energy shall not admit liability in any matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Atmos Energy. Atmos Energy's obligation to defend shall apply regardless of whether Atmos Energy is solely or concurrently negligent provided that Indemnitees may be held responsible for the cost of such defense paid for by Atmos Energy. Indemnitees shall give Atmos Energy prompt notice of the making of any claim or commencement of any action, suit or other proceeding covered by the provision of this Section 11. Nothing herein shall be deemed to prevent the Indemnitees at their election and their own expense from cooperating with Atmos Energy and participating in the defense of any litigation by their own counsel.
- D. In fulfilling its obligation to defend and indemnify City, Atmos Energy shall have the right to select defense counsel, subject to City's approval, which shall not be unreasonably withheld. Atmos Energy shall retain defense counsel within seven business days of City's written notice that City is invoking its right to indemnification under this Franchise. If Atmos Energy fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Atmos Energy shall be liable for all defense costs incurred by City, except as otherwise set out in this Section 11.A.

SECTION 12. RESERVATION OF RIGHTS; NON-EXCLUSIVE FRANCHISE.

- A. City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with State law, regulation and control of Atmos Energy's use of the Public Rights-of-Way to ensure the rendering of efficient public service and the maintenance of Atmos Energy's System in good repair throughout the term of this Franchise.
- B. The rights, privileges and franchises granted by this Franchise are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights and franchises as it may see fit to any other person or

corporation for the purpose of transporting, delivering, distributing or selling gas to and for City and the inhabitants thereof.

- C. City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing or selling gas to and for the City and inhabitants thereof.
- D. Nothing herein shall impair the right of City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas and other charges, to be charged by Atmos Energy to residential consumers, commercial consumers, industrial consumers or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

SECTION 13. PAYMENTS TO CITY.

- A. In consideration of the privilege and license granted by City to Atmos Energy to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Atmos Energy, its successors and assigns, agree to pay and City agrees to accept, such franchise fees in the amount and manner described herein. Except as otherwise provided for in Section 13.B., such payments shall be made on a quarterly basis, on or before the 10th days of January, April, July and October, 2018, and on or before the same days of each succeeding year during the life of this Franchise the last payment of the initial term being made on the 10th day of October, 2037, a sum of money which shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section 2 above, received by Atmos Energy during the preceding calendar quarter and shall be for the rights and privileges during the quarter in which the payment is made.
- B. The franchise fee amounts based on "Contributions in Aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2019, and will be based on CIAC received from January 1, 2018, through December 31, 2018. Unless this Franchise is extended pursuant to Section 1, the final payment of franchise fee amounts based on CIAC will be April 30, 2038, for the calendar year ending in 2037.
- C. The initial payment made under this Franchise for the rights and privileges herein provided shall be on January 10, 2018, and shall be for the privilege period January 1 through March 31, 2018, and each succeeding payment shall be for the privilege period of the calendar quarter in which the payment is made as follows:

<u>Payment Due Date</u>	<u>Quarter Upon Which Payment is Based</u>	<u>Quarter for Which Payment is Made</u>
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April 10 th	January 1 – March 31	April 1 – June 30
July 10 th	April 1 – June 30	July 1 – September 30
October 10 th	July 1 – September 30	October 1 – December 31
January 10 th	October 1 – December 31	January 1 – March 31

- D. It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Atmos Energy's separate obligations to reimburse the City for City's reasonable rate case expenses and for street repairs or other damage to Public Facilities caused by Atmos Energy employees or Contractors in accordance with City's ordinances and policies, are not affected by Atmos Energy's payment of franchise fees hereunder. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's obligations, if any, to pay any such occupation taxes, licenses, charges, fees or rentals.
- E. If Atmos Energy fails to pay when due any payment provided for in this Section, Atmos Energy shall pay such amount plus interest consistent with the rate for customer deposits under Texas Utilities Code Section 183.003 from such due date until payment is received by City.
- F. *Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy.* If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise in toto. The City may request waiver of certain terms and Atmos Energy may grant, in its sole reasonable discretion, such waiver.
- G. *Atmos Energy Franchise Fee Recovery Tariff.*

- (1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.
 - (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100 percent recovery of such franchise fees as part of Atmos Energy's rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, the City will take an affirmative position supporting 100 percent recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100 percent recovery of such franchise fees by Atmos Energy; and (iv) it will take no action, nor cause any other Person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.
- H. *Lease of Facilities within City's Rights-of-Way.* Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its System Facilities within City's Public Rights-of-Way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the System Facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 13 of this Franchise. This authority to lease System Facilities within City's Public Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees or similar Public Rights-of-Way user fees.
- I. City shall endeavor to, within 30 days of final approval and submission to the Texas Comptroller of Public Accounts, give Atmos Energy notice of annexations and disannexations of territory by City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Atmos Energy shall promptly initiate a process to reclassify affected customers into the City limits no later than 60 days after receipt of notice from City. The annexed areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Atmos Energy will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments. In no event shall Atmos Energy be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

SECTION 14. BOOKS AND RECORDS.

- A. Atmos Energy agrees that at the time of each quarterly payment, Atmos Energy shall also submit to the City a statement showing its Gross Revenues, as defined in Section 2.E., for the preceding calendar quarter. City shall be entitled to treat such payment as though it were sworn and signed by an officer of Atmos Energy.

- B. City may, if it sees fit, upon reasonable notice to the Atmos Energy, have the books and records of Atmos Energy examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein. Atmos Energy shall make available, during normal working hours and upon reasonable notice, such personnel and records as City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefor. Atmos Energy shall assist City in its review by providing all requested information no later than fifteen (15) business days after receipt of a request. The cost of the audit shall be borne by City unless the audit discloses that Atmos Energy has underpaid the franchise fee by 10 percent or more, in which case the reasonable costs of the audit shall be reimbursed to the City by Atmos Energy. If such an examination reveals that Atmos Energy has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Atmos Energy shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 13.E. Should Atmos Energy determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Atmos Energy regarding the existence of such overpayment, City shall review Atmos Energy's claim and if said overpayment is confirmed, remit the amount of overpayment to Atmos Energy.
- C. If, after receiving reasonable notice from City of City's intent to perform an audit as provided herein, Atmos Energy fails to provide data, documents, reports or information required to be furnished hereunder to City or fails to reasonably cooperate with City during an audit conducted under the terms hereunder, Atmos Energy shall be liable for payment of a fee as set forth herein. City shall give Atmos Energy written notice of its intent to impose a fee and shall provide Atmos Energy with a period to cure its failure, such period not to exceed five (5) working days. If Atmos Energy fails to cure the alleged failure within the prescribed time period, Atmos Energy's alleged failure to comply shall be heard at a public meeting of the City Council. Atmos Energy shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such failure is scheduled to be considered by the City Council. The notice to Atmos Energy shall include a list of the failures complained of. Atmos Energy shall have an opportunity to address the City Council at such public meeting. Commencing five calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Atmos Energy to comply with the requirements of this Section, the City may elect to terminate this Franchise in accordance with Section 15.
- D. If Atmos Energy provides confidential or proprietary information to the City, Atmos Energy shall be solely responsible for identifying such information with markings calculated to bring the City's attention to the proprietary or confidential nature of the information. City agrees to maintain the confidentiality of any non-public information obtained from Atmos Energy so designated to the extent allowed by law. City shall not be liable to Atmos Energy for the release of any

information City is required to release by law. If City receives a request under the Texas Public Information Act that includes Atmos Energy's proprietary or confidential information, City will notify the Texas Attorney General of the proprietary or confidential nature of the document(s). City also will provide Atmos Energy with a copy of this notification, and thereafter Atmos Energy is responsible for establishing that an exception under the Texas Public Information Act allows City to withhold the information.

SECTION 15. TERMINATION.

- A. *Right to Terminate.* In addition to any rights set out elsewhere in this Ordinance, City reserves the right to terminate this Franchise and all rights and privileges pertaining thereto, in the event that Atmos Energy violates any material provision of the Franchise.

- B. *Procedures for Termination.*
 - (1) City may, at any time, terminate this Franchise for a continuing material violation by Atmos Energy of any of the substantial terms hereof. In such event, City shall give to Atmos Energy written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to Atmos Energy at the address set forth in Section 16.A. Atmos Energy shall have 60 days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Atmos Energy fails to cease such violation or otherwise comply with the terms hereof, then Atmos Energy's Franchise is subject to termination under the following provisions, provided; however, that if Atmos Energy commences work or other efforts to cure such violations within 30 days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

 - (2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby Atmos Energy is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Atmos Energy shall be provided at least 15 days prior written notice of any public hearing concerning the termination of the Franchise. In addition, 10 days' notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by Atmos Energy.

 - (3) City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by Atmos Energy of mitigating circumstances or upon a showing of good cause of said violation or

failure to comply as may be determined by the City Council.

- (4) Nothing herein stated shall preclude Atmos Energy from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.
- (5) Nothing herein stated shall prevent City from seeking to compel compliance by suit in any court of competent jurisdiction if Atmos Energy fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Atmos Energy to comply with said terms.

SECTION 16. NOTICES.

- A. Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY
City Manager
City of Mesquite
1515 North Galloway Avenue
Mesquite, Texas 75149

ATMOS ENERGY
Manager of Public Affairs
Atmos Energy Corporation
Mid-Tex Division
5420 LBJ Freeway, Suite 1873
Dallas, Texas 75240

City Attorney
City of Mesquite
1515 North Galloway Avenue
Mesquite, Texas 75149

- B. Atmos Energy shall provide to the City a local or toll-free telephone number that is manned 24 hours a day, seven days a week to provide available information relating to emergency situations. The City understands that this telephone number is not equipped to handle calls from the public and the City will not provide this number to customers, but will direct them to Atmos Energy's Call Center. If Atmos Energy cannot timely respond to an emergency with Atmos Energy employees, Atmos Energy will attempt to respond to the emergency with qualified local contractors. Atmos Energy's contact information shall be kept current at all times. Atmos Energy and

the City shall periodically, and upon request by either party, meet to discuss and address emergency response issues in order to rectify any problems identified by either party.

SECTION 17. SUCCESSORS AND ASSIGNS.

- A. The rights granted by this Franchise inure to the benefit of the Atmos Energy. Atmos Energy may, without consent by City, transfer or assign the rights granted by this Franchise to an Affiliate provided that such Affiliate assumes all obligations of Atmos Energy hereunder and is bound to the same extent as Atmos Energy hereunder, and has net capital and liquid assets reasonably equivalent to the Atmos Energy's as of the month immediately preceding the transfer or there are provided other guarantees or assurances of the transferee's or assignee's financial ability to perform this Franchise reasonably acceptable to the City. Atmos Energy shall give City written notice thirty (30) days prior to such assignment.
- B. City will have the right to approve the transfer or assignment of the franchise, except as provided in Section 17(A). City shall grant approval unless the Assignee is unable to demonstrate its credit worthiness. For the purpose of this section, "credit worthiness" means that the long term unsecured debt rating of the Assignee is investment grade as rated by both S&P and Moody's. If the Assignee is unable to demonstrate its credit worthiness, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the Assignee. City agrees that said approval shall not be unreasonably withheld or delayed. Any such assignment or transfer shall require that said Assignee assume all obligations of Atmos Energy be bound to the same extent as Atmos Energy hereunder. If within the first 90 days after assignment to Assignee, City identifies a failure to comply with a material provision of this Franchise, City shall have the right, after notice and opportunity before City Council, to terminate this Franchise.

SECTION 18. RENEGOTIATION. If either City or Atmos Energy requests renegotiation of any term of this Ordinance, Atmos Energy and City agree to renegotiate in good faith, revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION 19. NO WAIVER. Either City or Atmos Energy shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 20. PARAGRAPH HEADINGS; CONSTRUCTION. The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit

the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance, and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION 21. NO THIRD PARTY BENEFICIARIES. This Franchise is made for the exclusive benefit of the City and Atmos Energy, and nothing herein is intended to, or shall confer any right, claim or benefit in favor of any third party.

SECTION 22. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES. This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Mesquite City Charter, as amended, and all other generally applicable ordinances of the City of Mesquite, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

SECTION 23. FORCE MAJEURE. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event either the City or Atmos Energy is unable to comply with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which such party is so prevented shall not be counted against such party for any reason. The term "force majeure" as used herein shall mean any cause not reasonably within the control of the party unable to comply with its obligation or undertaking hereunder and includes, but is not limited to, acts of God, strikes, lock-outs, wars, riots, orders or decrees of any lawfully constituted federal, state or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakage or accident to machinery or lines of pipe, inability to obtain or delay in obtaining rights-of-way, materials, supplies or labor permits, temporary failures of gas supply, or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this Ordinance.

SECTION 24. PREVIOUS ORDINANCES. When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to Atmos Energy or its predecessors in interest granted by the City of Mesquite, Texas, are hereby repealed.

SECTION 25. SEVERABILITY. This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION 26. ACCEPTANCE OF FRANCHISE.

- A. The City shall provide Atmos Energy with a certified copy of this Franchise by certified mail within five (5) days of passage. In order to accept this Franchise, Atmos Energy must file with the City Secretary its written acceptance of this Franchise Ordinance within 30 days after its final passage and approval by City. If such written acceptance of this Franchise Ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

- B. Unless extended pursuant to Section 1, at 11:59 P.M. on December 31, 2037, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

SECTION 27. EFFECTIVE DATE. If Atmos Energy accepts this Ordinance, it becomes effective as of January 1, 2018. Atmos Energy's obligation to submit payments to the City in compliance with Section 13 will begin January 1, 2018.

DULY PASSED AND APPROVED on first reading by the City Council of the City of Mesquite, Texas, on the 20th day of November, 2017.


DULY PASSED AND APPROVED on second reading by the City Council of the City of Mesquite, Texas, on the 30th day of November, 2017.

Stan Pickett
Mayor

ATTEST:

APPROVED:

Sonja Land
City Secretary



B. J. Smith
City Attorney

STATE OF TEXAS §

COUNTY OF DALLAS §

CITY OF MESQUITE §

I, Sonja Land, City Secretary of the City of Mesquite, Dallas County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Mesquite, Texas, at a _____ session, held on the _____ day of _____, 2017, as it appears of record in the Minutes in Book _____, Page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the _____ day of _____, 2017.

Sonja Land, City Secretary
City of Mesquite, Texas